

FILED

JUL - 8 2005

RICHARD W. WIERING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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JAGJEET KAPOOR; DAVID VILLANUEVA;  
11 INTEL CORPORATION

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 ELBERT MADISON, CASE NO. C04-3936 JF/PVT  
15 Plaintiff, Civil Rights

16 v.  
17 CONSENT DECREE AND ORDER

18 GOLDEN STATE RESTAURANTS,  
INC.; JAGJEET KAPOOR; DAVID  
19 VILLANUEVA; INTEL  
CORPORATION; and DOES 1  
20 through 25, Inclusive,  
21 Defendants.

22 \_\_\_\_\_ /  
23  
24 CONSENT DECREE AND ORDER

25 1. Plaintiff Elbert Madison filed a Complaint on  
26 September 29, 2004 and a Second Amended Complaint in this  
27 action on February 16, 2005, to enforce provisions of the  
28 Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§

12101 et seq., and California civil rights laws against Defendants, GOLDEN STATE RESTAURANTS, INC.; JAGJEET KAPOOR; DAVID VILLANUEVA; INTEL CORPORATION; and DOES 1 through 25, Inclusive. Plaintiff has alleged that Defendants GOLDEN STATE RESTAURANTS, INC.; JAGJEET KAPOOR; DAVID VILLANUEVA; INTEL CORPORATION violated Title III of the ADA and sections 51, 52, 54.1, and 55 of the California Civil Code, and sections 19955 et seq., of the California Health and Safety Code by failing to provide full and equal access to their facilities at the Pedro's restaurant located at 3935 Freedom Circle, Santa Clara, California when plaintiff was deterred from visiting the subject facility on April 22, 2004, and May 19, 2004.

2. Defendants GOLDEN STATE RESTAURANTS, INC.; JAGJEET KAPOOR; DAVID VILLANUEVA; INTEL CORPORATION; ("Defendants") deny the allegations in the Complaint and by entering into this Consent Decree and Order do not admit liability to any of the allegations in Plaintiff's Complaint filed in this action. The parties hereby enter into this Consent Decree and Order for the purpose of resolving this lawsuit without the need for protracted litigation, and without the admission of any liability.

### JURISDICTION:

3. The parties to this consent decree agree that the Court has jurisdiction of this matter pursuant to 28 USC §1331 for violations of the Americans with Disabilities Act of 1990, 42 USC 12101 et seq. and pursuant to pendant jurisdiction for violations of California Health & Safety Code §19955 et seq.,

1 including §19959; Title 24 California Code of Regulations; and  
2 California Civil Code §§51; 52; 54; 54.1; §54.3; and 55.

3 4. In order to avoid the costs, expense, and uncertainty  
4 of protracted litigation, the parties to this consent decree  
5 agree to entry of this Order to resolve all claims regarding  
6 injunctive relief raised in the Second Amended Complaint filed  
7 with this Court on February 16, 2005. Accordingly, they agree  
8 to the entry of this Order without trial or further  
9 adjudication of any issues of fact or law concerning  
10 plaintiff's claims for injunctive relief.

11 WHEREFORE, the parties to this consent decree hereby  
12 agree and stipulate to the Court's entry of this Consent Decree  
13 and Order, which provides as follows:

14  
15 SETTLEMENT OF INJUNCTIVE RELIEF:

16 5. This Order shall be a full, complete, and final  
17 disposition and settlement of Plaintiff's claims against  
18 Defendants for injunctive relief that have arisen out of the  
19 subject Complaint. The parties agree that there has been no  
20 admission or finding of liability or violation of the ADA  
21 and/or California civil rights laws, and this Consent Decree  
22 and Order should not be construed as such.

23 6. The parties agree and stipulate that the corrective  
24 work will be performed in compliance with the standards and  
25 specifications for disabled access as set forth in the  
26 California Code of Regulations, Title 24-2 and Americans with  
27 Disabilities Act Accessibility Guidelines, unless other  
28 standards are specifically agreed to in this Consent and Order:

1           a) Remedial Measures: The injunctive relief agreed upon  
 2 by the Parties is attached as **Attachment A** to this Consent  
 3 Decree, which is incorporated herein by reference as if fully  
 4 set forth in this document. Defendants agree to undertake all  
 5 remedial work set forth in **Attachment A**.

6 Timing of Injunctive Relief: Defendants will submit plans for  
 7 all corrective work within 60 days of entry of this consent  
 8 decree and order by the court, will commence work within 30  
 9 days of receiving approval from the building department, and  
 10 will complete work within 60 days of commencement. In the  
 11 event that Defendants experience unforeseen difficulties that  
 12 prevent them from completing the agreed-upon work at all or  
 13 in the deadlines specified herein, Defendants or their  
 14 counsel will (a) notify plaintiff's counsel in writing within  
 15 15 days of discovering that delay, (b) may seek relief from  
 16 the court from the obligations imposed in the Consent Decree  
 17 and may, upon a showing of good cause, obtain relief from  
 18 such obligations as the Court deem appropriate. Defendants  
 19 shall be entitled to relief from any deadline imposed herein  
 20 upon a showing of good cause for such relief. Plaintiff will  
 21 conduct a meet and confer with that defendant(s) or their  
 22 attorney at least 30 days prior to seeking a motion to compel  
 23 enforcement of the Consent Decree if the corrective work is  
 24 not completed as contemplated by this Consent Decree.  
 25 Defendants or their counsel will notify plaintiff's counsel  
 26 when the corrective work is completed, and in any case will  
 27 provide a status report no later than 120 days from the entry  
 28

1 of this consent decree.

3 DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:

4 7. The parties have ~~not~~ reached an agreement  
5 regarding plaintiff's claims for damages, attorney fees,  
6 litigation expenses and costs. ~~These issues shall be the~~

7 ~~subject of further negotiation, further litigation, or of~~  
8 ~~motions to the court.~~

9 *For all damages to plaintiff Elbert Madison  
and \$51,000, for all of plaintiff's attorneys fees, litigation  
expenses and costs, a total of \$66,000. To be paid as follows,  
to "Paul Rein in Trust for Elbert Madison":*

10 ENTIRE CONSENT ORDER: *\$22,000 in 30 days from today, \$22,000 in 60  
days from today and \$22,000 in 120 days from today.*

11 8. This Consent Order and Attachment A to this Consent  
12 Decree, which is incorporated herein by reference as if fully  
13 set forth in this document, constitutes the entire agreement  
14 between the parties on the matters of injunctive relief, and no  
15 other statement, promise, or agreement, either written or oral,  
16 made by any of the parties or agents of any of the parties,  
17 that is not contained in this written Consent Order, shall be  
18 enforceable regarding the matters of injunctive relief  
19 described herein. This consent decree applies to plaintiff's  
20 claims for injunctive relief ~~only~~ and does not resolve  
21 plaintiff's claims for monetary damages, attorney's fees,  
22 litigation expenses and costs, ~~which shall be the subject of~~  
23 ~~further negotiation and/or litigation.~~

25 CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:

26 9. This Consent Order shall be binding on Plaintiff  
27 ELBERT MADISON, Defendants, GOLDEN STATE RESTAURANTS, INC.;  
28 JAGJEET KAPOOR; DAVID VILLANUEVA; INTEL CORPORATION; and any

1 successors in interest. The parties have a duty to so notify  
 2 all such successors in interest of the existence and terms of  
 3 this Consent Order during the period of the Court's  
 4 jurisdiction of this consent decree.

5  
 6 MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO  
 7 INJUNCTIVE RELIEF ONLY:

8 10. Each of the parties to this Consent Decree  
 9 understands and agrees that there is a risk and possibility  
 10 that, subsequent to the execution of this Consent Decree, any  
 11 or all of them will incur, suffer, or experience some further  
 12 loss or damage with respect to the Lawsuit which are unknown or  
 13 unanticipated at the time this Consent Decree is signed.  
 14 Except for all obligations required in this Consent Decree, the  
 15 parties intend that this Consent Decree apply to all such  
 16 further loss with respect to the Lawsuit, except those caused  
 17 by the parties subsequent to the execution of this Consent  
 18 Decree. Therefore, except for all obligations required in this  
 19 Consent Decree, this Consent Decree shall apply to and cover  
 20 any and all claims, demands, actions and causes of action by  
 21 the parties to this Consent Decree with respect to the Lawsuit,  
 22 whether the same are known, unknown or hereafter discovered or  
 23 ascertained, and the provisions of Section 1542 of the  
 24 California Civil Code are hereby expressly waived. Section  
 25 1542 provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
 27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
 28 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM



1 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
 2 DEBTOR.

3 ~~This waiver applies to the injunctive relief aspects of this~~  
 4 ~~action only and does not include resolution of plaintiff's~~  
 5 ~~claims for damages, attorney fees, litigation expenses and~~  
 6 ~~costs.~~

7 11. Except for all obligations required in this Consent  
 8 Decree, ~~and exclusive of the referenced continuing claims for~~  
 9 ~~damages, statutory attorney fees, litigation expenses and~~  
 10 ~~costs~~, each of the parties to this Consent Decree, on behalf of  
 11 each, their respective agents, representatives, predecessors,  
 12 successors, heirs, partners and assigns, releases and forever  
 13 discharges each other Party and all officers, directors,  
 14 shareholders, subsidiaries, joint venturers, stockholders,  
 15 partners, parent companies, employees, agents, attorneys,  
 16 insurance carriers, heirs, predecessors, and representatives of  
 17 each other Party, from all claims, demands, actions, and causes  
 18 of action of whatever kind or nature, presently known or  
 19 unknown, arising out of or in any way connected with the  
 20 Lawsuit.

21  
 22 TERM OF THE CONSENT ORDER:

23 12. This Consent Order shall be in full force and effect  
 24 for a period of twelve (12) months after the date of entry of  
 25 this Consent Order, or until the injunctive relief contemplated  
 26 by this Order is completed, whichever occurs later. The Court  
 27 shall retain jurisdiction of this action to enforce provisions  
 28 of this Order for twelve (12) months after the date of this

1 Consent Decree, or until the injunctive relief contemplated by  
2 this Order is completed, whichever occurs later.

3  
4 SEVERABILITY:

5 13. If any term of this Consent Decree and Order is  
6 determined by any court to be unenforceable, the other terms of  
7 this Consent Decree and Order shall nonetheless remain in full  
8 force and effect.


9  
10 SIGNATORIES BIND PARTIES:

11 14. Signatories on the behalf of the parties represent  
12 that they are authorized to bind the parties to this Consent  
13 Decree and Order.

14  
15 Dated: June 22, 2005

16   
17 Plaintiff ELBERT MADISON

18 Dated: June 22<sup>th</sup>, 2005

19   
20 Defendant GOLDEN STATE  
RESTAURANTS, INC.

21 Dated: June 22<sup>th</sup>, 2005

22   
23 Defendant JAGMEET KAPOOR

24 Dated: June 27, 2005

25   
26 Defendant DAVID VILLANUEVA




1 Dated: June 27, 2005

  
Defendant INTEL CORPORATION

2  
3  
4  
5 APPROVED AS TO FORM:

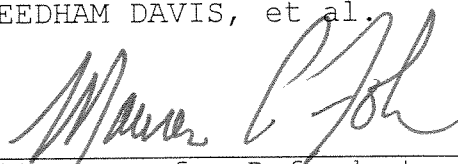
6 Dated: June 27, 2005

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11  
12 Dated: June 27, 2005

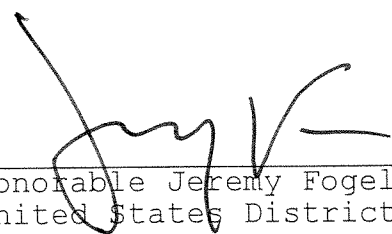
PETER H. KIRWAN  
MAUREEN FOLAN  
NEEDHAM DAVIS, et al.

  
Attorneys for Defendants  
GOLDEN STATE RESTAURANTS, INC.;  
JAGJEET KAPOOR; DAVID VILLANUEVA;  
INTEL CORPORATION

18  
19 ORDER

20 Pursuant to stipulation, and for good cause shown, IT IS SO  
21 ORDERED.

22  
23 Dated: 7-5, 2005

  
Honorable Jeremy Fogel  
United States District Judge

**Attachment A to Consent Decree and Order**  
**Elbert Madison v. Golden State Restaurants, Inc., et al.**  
**CASE NO. C04-3936 JF/PVT**  
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The following injunctive relief is agreed upon between the parties as resolution to plaintiff's claims for injunctive relief as set forth in the Second Amended Complaint filed by Elbert Madison on February 16, 2005 in the United States District Court, Case No. C04-3936 JF/PVT.

The parties agree that the corrective work set forth in this Attachment A will be performed in compliance with the California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines, unless other standards are specifically agreed to in this Consent Decree and Order.

1. **Parking**: Defendants will provide seven (7) accessible parking spaces one of which will be a van-accessible space. The accessible spaces must contain no slope or cross-slope in excess of 2% (current slopes range from 3% to 5.2%). Each "regular" accessible parking space will be served by an access aisle at least 5' wide, and the van-accessible space will be served by an 8' wide access aisle. Defendants will also provide an accessible path of travel from the parking spaces to the front entrance of the restaurant (see #2(a), below).
2. **Exterior Paths of Travel**: The following items will be addressed:
  - a. **Path of Travel from Accessible Parking**: Defendants will provide an accessible path of travel from the accessible parking to the public entrance of the restaurant which does not require disabled persons to travel behind vehicles other than their own.
  - b. **Path of Travel from Circular Drop-Off Area**: Defendants will install a curb ramp directly in front of the front entrance of the building to provide a path of travel for disabled customers who may be dropped off in the circular paved area which serves as a passenger loading zone in front of the restaurant.
  - c. **Path of Travel from Public Right-of-Way to the Restaurant Walkway**: Defendants will provide an accessible path of travel from the public right-of-way to the front entrance of the building by installing curb cuts on either side of the walkway in front of the Restaurant.
3. **Entrance to the Building**: The front entrance to the restaurant consists of two sets of double doors. The outer doors must be kept in the open position during all hours that the restaurant is open to the public. The inner doors require addition of a 10-inch high "kick plate" on the push-side of the door.

**Attachment A to Consent Decree and Order**  
**Elbert Madison v. Golden State Restaurants, Inc., et al.**  
**CASE NO. C04-3936 JF/PVT**  
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In addition, the door closer must be adjusted to require no more than 5 pounds of pressure to open the inner doors.

4. **Second Floor Banquet Rooms:** Defendants will modify their practices and procedures by converting the second floor banquet rooms from privately rented banquet and conference rooms into general public dining areas. Defendants will not advertise or rent out the second floor rooms for private banquets or as private conference rooms, but may reserve the second floor rooms for private dining parties as part of their general dining reservations. Defendants will not be required to modify the existing door ways for disabled access.
5. **Interior Paths of Travel:** Complying handrails will be installed on both sides of the ramp leading from the "Greenhouse" to the "Trophy Room." Additionally, complying handrails will be installed on each of the stairways inside the restaurant. Such handrails must be on both sides of each stairway, and must extend 12" beyond the top and bottom stair treads. Where the extension of the handrail would create a protruding hazard, the termination of the extension may be either rounded or returned smoothly to floor, wall, or post.
6. **Restrooms:** Defendants will provide fully accessible men's and women's restrooms in the Pedro's Restaurant which fully comply with all ADAAG and Title 24 standards.
7. **Bar/Lounge/Patio Areas:**
  - a. **Self-Service Food Bar:** The self-service food bar will be reconfigured to provide an accessible 36" aisle way with no more than a 34" reach range, or alternatively, defendants may remove the self-service bar.
  - b. **Outdoor Patio Gates:** The outdoor dining patio gates will be fitted with 10" high kickplates on the push-side of each gate.